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MEMORIAL ADDRESS

ON THE

LIFE AND CHARACTER

OF THE

HON. CHARLES MARSH, LL. D.,

READ BEFORE THE

VERMONT HISTORICAL SOCIETY,

IN THE REPRESENTATIVES' HALL,

OCTOBER 11, 1870,

BY

JAMES BARRETT, LL. D.,

JUDGE OF THE SUPREME COURT.

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JOURNAL STEAM PRINTING ESTABLISHMENT.
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ADDRESS.

Mr. President:—I see by the public announcement that the designated service for this evening is "the Annual Address." I have prepared myself to respond to this announcement only by reading a memorial paper.

But before proceeding, it seems fitting that I should allude to the bereavement which this Society has recently experienced in the sudden and untimely death of its President,* who was also, for all the years of his manhood, one of its most earnest and efficient members, officers, and workers. This event, following so soon upon the death of his worthy and distinguished predecessor† in the presidential office—his friend and most zealous and successful co-worker in realizing to the public the peculiar purposes which the Society was designed to serve,—is doubly potent as a cause for sorrow, and doubly potent as an admonition to the living, how certain is death, and how uncertain the continuance of life and work on earth. In such an hour as he thought not, even as a thief in the night, the Son of Man came. May the living lay it to heart.

While to the rising and middle aged generations of the present day in this State the names of Allen, and Chitten-

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*George F. Houghton, Esq. †Rev. Pliny H. White.

den, and Baker, and Warner, and Robinson, are familiar as designating prominent and historic characters in the scenes and deeds that brought into organized and distinctive existence, as a body politic, what ultimately became a member of the American Union as the State of Vermont, there are other names, now hardly known to fame, that designated men whose life and deeds entered largely into the rudimental growth and fruitful maturity of the State, as it now stands forth in its excellence of character.

The emergencies, springing from the colonial complications between New York and New Hampshire in reference to the territory now constituting Vermont, required the defiant boldness, the judicious shrewdness, the fruitful adroitness, the unflinching persistence, and the obdurate fortitude that characterized and distinguished the men whom I have named and their prominent associates. But when those emergencies had been so far solved that Vermont had established its independence as a State, and as such could fulfil its functions only by establishing social order upon the foundations of law, then it was that the class of men to whom I secondly referred, but did not name, became as important and serviceable as the former class had been. The former founded the State as a political organization. The latter developed its capabilities, through legislation and judicial administration, for realizing to the dwellers within its borders the beneficent results for which it was designed by its founders. The State, as a political organization of constitutional basis and frame-work merely, is of nothing worth. It is only when it ordains and administers law that it becomes a vitalized and active power for the common

weal. To the most casual reflection it is obvious that the law in its administration — the law, as the prescribed rule of the right, duty and liability of every human being within the State, in reference both to person and property, in all the relations and enterprises of associated life — is the sole instrumentality by which the government acts in the accomplishment of the purposes for which it has existence. The makers and ministers of law supervene upon the makers of constitutions of government. The former give practical operation and effect to the work which the latter have brought forth.

When Vermont first assumed an independent existence upon the basis of a constitution of government in 1777, the then present object of chief interest was to continue and consummate successful resistance to the claims and course of New York in reference to the New Hampshire Grants. This continued for several years, during which little attention was given to the general and special legislation, and to the establishment of a systematic and well considered body of jurisprudence, such as was necessary, and would be adequate, to the upbuilding, consolidation and improvement in social prosperity and cultivation of the entire body of the people as their numbers should increase and their wants be multiplied. This is fully illustrated by the fact that the constitution of 1777 was not submitted to any action of the people after having been adopted by the convention at Windsor: by the fact — to modern minds somewhat amusing — that the legislature, in 1779, solemnly enacted that the constitution — that constitution under which the legislature had been elected and was then assembled and acting — "shall

be forever considered, held and maintained as part of the laws of this State";—rather a marked instance of the stream undertaking to rise higher than its fountain spring. Again, in 1782, in the words of the preamble: "To prevent disputes respecting the legal force of the constitution of this State, and to determine who are entitled to the general privileges of the constitution and laws," the legislature proceeded to re-enact, with some additions, the act of 1779 just recited. It is further illustrated by the fact that the laws passed at several successive sessions of the legislature were declared to be temporary, and to remain in force only till the rising of the next session thereafter.

The meagre, crude, and fragmentary character of the law, as well as the meagerness of the ideas of the then controlling minds in reference to law, as the rule of the rights, duties, and liabilities of all the subjects of the government, could not be made more palpable than by an enactment of 1779—a part of which I cite, as follows:

"That no man's life shall be taken away; no man's honor or good name be stained; no man's person shall be arrested, restrained, banished, dismembered, nor any ways punished; no man shall be deprived of his wife or children; no man's goods or estates shall be taken away from him, nor any ways endamaged, under color of law, or countenance of authority, unless it be by some express law of this State warranting the same, established by the General Assembly; or, in defect of such law, in any particular case, by some plain rule, warranted by the word of God."

"*Be it further enacted by the authority aforesaid*, That common law, as it is generally practiced and understood in the New England States, be and is hereby established as the common law of this State."

In such a condition of the law, both statutory and common, in a State not then a member of the Union, and in controversy with New York as to the right and fact of separate existence, and with New Hampshire as to territorial limits on the East, the population of which was largely spiced with persons who had left their homes in other Provinces and States as a measure of safety to themselves, as well as for the good of the countries they had left, and in such condition and habits of mind — such views, purposes and modes as characterized the aggregate of the inhabitants, the field was by no means the most inviting to educated professional men. Yet that field was most urgently needing men of study and cultivation in general learning, as well as in the particular department of the law, — men of clear moral apprehensions and strong moral convictions — men of uprightness and integrity, of effective force of intellect and will in behalf of the right in law and morals, to be exerted in efforts, judiciously directed, to the bringing order out of confusion, and to resolve the prevailing chaos into a law established, law governed, and God fearing State.

At an early day, and an opportune time, such men began to appear in the persons of Stephen R. Bradley, Stephen Jacob, Nathaniel Chipman, Amasa Paine, Daniel Buck, Daniel Chipman, Charles Marsh, Asa Aldis, and others, their cotemporaries and co-workers. To them belonged the work of asserting for the State the law in its true significance — the law as a system based on principles of justice and equity, as embodied in the common law of England, but to be modified, adapted, and supplemented by wise legis-

lation, and all to be so done and administered as to serve all the needs of the young, crude, restless and growing State; and that work they did both wisely and well.

For the present occasion I am to speak particularly of one of that class of men — CHARLES MARSH.

I trust I shall not be thought to have transcended proper limits if I range somewhat beyond merely the personal biography of one who was so conspicuous in his day as a lawyer and a citizen — derived in maternal ancestry from Major John Mason, famous in the early scenes of Connecticut history — a cousin, in the same line, of Jeremiah Mason, the greatest of New England lawyers — a son of Joseph Marsh, of Hartford, the first Lieutenant-Governor of Vermont, — an uncle of President and Professor James Marsh, the most eminent of American ethical and theological philosophers, and of Dr. Leonard Marsh, recently deceased, one of the most learned classical, scientific and professional scholars of his day — and father of George P. Marsh, the statesman, diplomatist, and author, and, in all departments of human learning, accorded the first rank by the learned both of this country and of Europe. As the object of my being called to my present duty is that I may contribute somewhat in furtherance of the proper ends of this association as the Vermont Historical Society, and in view of the great honor that has been brought to the State by those who have borne, and still bear, the illustrious name of Marsh, all vitalized by the same family blood, I trust I shall not weary by some detail of personal statistics.

Mr. MARSH was born in Lebanon, Conn., July 10, 1765. He was a descendant of John Marsh, who emigrated from England to the colony of Massachusetts in 1633, and removed from that colony with the Rev. Mr. Hooker and his congregation to commence the settlement of Hartford, Conn., in 1635. John Marsh married Anne, a daughter of Deputy Governor (or assistant) John Webster, and by her he had a numerous family. He survived her, and married for second wife the widow of Richard Lyman, of Northampton, Mass., by whom also he had children. Most of his immediate descendants remained in Hartford and its vicinity, with an inheritance of an extensive landed estate. John Marsh's grandson, Joseph, removed in 1697 to Lebanon, Conn., and there resided till his death. For many years he held prominent and influential positions in that region. He had a son Joseph, who also spent his life in Lebanon. The second Joseph also had a son Joseph, who was the father of Charles — the subject of my present reading. That third Joseph — the father of Charles — also resided in the same town, except for a short time, till, in 1773, he removed to Hartford, Vermont, where he settled upon land he had purchased, and the same that now constitutes the farm of Hon. John Porter, a little below Queeche Village. He had also purchased other extensive tracts in Hartford, and in neighboring towns.

Having had much experience in business and public affairs in the colony of Connecticut, upon removing to Vermont he at once became interested and active in the questions and controversies that were agitating the embryo

State, and was soon called to stations of trust and responsibility. For a while he seems to have sympathized somewhat with those who favored the jurisdiction of New York. In 1776, he was twice chosen a delegate for the county of Cumberland to the Provincial Congress of New York. That county then included the greater part of what are now Windham and Windsor counties, and portions of Rutland and Bennington. It appears, however, that he was not present at the sessions of that Congress, except for a short time in the summer of that year. Notwithstanding that early tendency, he nevertheless favored and sustained the establishment of an independent State Government, and under it was elected the first Lieutenant-Governor. In the same year, 1776, he was commissioned Colonel of the Northern, or "Upper Regiment," (as it was then designated,) of Cumberland county. In the year 1777, on the call of Gen. Schuyler for reinforcements for Gen. St. Clair, when Burgoyne was approaching Ticonderoga, Col. Marsh marched thither with the quota required from his regiment. But the fortress had been evacuated before he was able to reach St. Clair's army.

I have recently received a letter from the Hon. Roswell Marsh, of Steubenville, Ohio, a grandson of Governor Joseph Marsh, who was born and brought up in the same family with his grandfather, and was eighteen years old when his grandfather died in 1811. From his recollection of conversations in the family, in which the grandfather, with various other persons, freely participated, touching the early events of revolutionary and state history, he is certain that his grandfather, who was then the colonel of a militia regiment,

was present and took part in the battle of Bennington, as were also two of his brothers and one of his sons. Mr. Marsh's memory and convictions are entitled to great reliance. He is one of the marked men of the family, and has been for many years one of the ablest and most honored men of the Ohio bar. He has recently retired from professional practice with public demonstrations of reverence and respect for his ability and his worth. I have the memorandum of a note from Governor Hall, in which he says he thinks that Col. Marsh was not at that battle, but that he may have been subsequently in the service on the Hudson. I propose to file Mr. Marsh's letter, or a copy of it, in the archives of this Society. It is valuable as a graphic memorial sketch of its distinguished subject. (*See Appendix.*)

After the battle of Bennington, Colonel Marsh aided in the rear of the army of Burgoyne in cutting off his communication with Canada.

Although Colonel Marsh had been somewhat identified with the interests of New-York, he was a member of the convention that met at Windsor on the 4th of June, 1777, and which elaborately set forth the reasons for separating Vermont from New-York, the members re-affirming the Declaration of Independence made at Westminster in the next previous January, and solemnly pledging themselves to each other to maintain their new and independent state organization, and to resist by force of arms the fleets and armies of Great Britain. At this convention the name of the State was changed from "New Connecticut" to Vermont. He was also elected a member of the convention

which adopted the State Constitution, at Windsor, on the 3d —4th of July of the same year.

Colonel Marsh represented Hartford in the first General Assembly under the State Constitution, in 1778. He had been the same year a candidate on the popular vote for the office of Lieutenant-Governor. On the meeting of the Legislature, a count was made of the votes for State officers while the returns were incomplete. Upon that count it was supposed that he had not been elected. Thereupon the Assembly proceeded to elect him to that office. It turned out, however, that he had in fact been elected by the people. By virtue of that office he was President of the Court of Confiscation for the eastern half of the State. At the next October session, the Assembly discarded the towns on the New Hampshire side of Connecticut river that had been admitted to a union with Vermont by the vote of a majority of the towns in Vermont and the vote of the Assembly in June of that year. Governor Marsh regarded that action to be a breach of faith, and he opposed and protested against it. In consequence of a change in public sentiment on that subject, he was not elected Lieutenant-Governor the next year. He was, however, elected to that office in 1787, 1788, and 1789. In the interim he represented Hartford several years in the General Assembly. He was also for twelve years chief judge of Windsor County Court. In addition to his official note, he was widely known as an active and consistent Christian, and a liberal supporter of the religious and benevolent objects of his day. He died at the age of eighty-five years, honored and long remembered for his

noble character, and his life of vigorous activity and effective beneficence. His home in Hartford was the scene of a hearty and generous hospitality, and was the birthplace of a large family of children and grandchildren, among whom were the James, and Leonard, and Roswell, already named.

As before intimated, Charles Marsh, on the maternal side, was descended from Major John Mason, who, in 1731, or 1732, emigrated from England to Dorchester, in Massachusetts. After short residences in several places in that colony and in Connecticut, he settled permanently in Norwich, Connecticut. For many years he took a conspicuous part in the civil and military affairs of the Colony. He was entrusted with the enterprise of putting a quietus upon the terrific and troublesome Pequot Indians, and he did it in the most effectual and lasting manner.

Colonel Jeremiah Mason, of Lebanon, Connecticut, and his sister Dorothy, were of his descendants. Colonel Jeremiah was the father of the eminent lawyer of the same name who died in Boston in November, 1848, at the age of eighty years. Dorothy, in 1750, became the wife of our Governor Joseph Marsh, and fifteen years later she became the mother of Charles, our present theme, who was the senior of his cousin Jeremiah Mason by about three years. In many mental and professional traits they bore a strong likeness. Throughout their long lives they kept up the most friendly and intimate intercourse.

When his father removed to Hartford, in 1773, Charles was a feeble boy, and thought to be unable to endure the

first year of border life in the forests of New Connecticut, as Vermont was then called. He was therefore left in the family of his sister, Mrs. Rockwell, in Lebanon, till the next year. He was then carried on horseback behind his mother to the family home in Hartford. In reply to some questioning of mine, he once humorously said that when the family moved to Vermont, he was so puny he was thought to be not worth the bringing, and so he was left behind for a year. He was then brought on; but proving worthless for any practical use at home, he was sent to college.

Mr. Marsh established himself in Woodstock in 1789. In 1786 the legislature had designated Woodstock as the shire of Windsor county. In 1787 it was enacted that the courts should be held at Windsor till the court-house should be built by the inhabitants of Woodstock to the acceptance of the judges of the county court. In 1790 it was enacted that the courts should sit alternately at Windsor and Woodstock, with this curious proviso: "Provided always, and this grant is upon this express condition, that the court-house in said Woodstock, and the court-house in said Windsor, shall be finished by the respective towns, free of any expense to said county, and furnished with good iron stoves, to the acceptance of the judges of the supreme court, before the next stated term of that court in said county." A somewhat singular contingency on which to leave the matter of having any courts at all in the county to depend. In 1791 it was enacted that the act making said two shires should remain in force for three years after the passing of the same, after which Woodstock should be and remain as the shire town in said county.

When Woodstock was first designated as the shire, what now constitutes the main and most beautiful portions of the village was owned by Capt. Israel Richardson, and was called his farm.

On the 29th of May, 1787, he conveyed to the county, by metes and bounds, what are now the public grounds and park in that village. In the meantime the building of a court-house was in progress, and had proceeded so far as to enable courts to be held in it; but before it was finished it was burned in 1791. Thereupon another was built upon a different location. In 1789, within what is now the village, besides the rudiments of a court-house, the only buildings were a tavern, put up by Capt. Richardson, "to accommodate court folks"—four dwelling-houses, a dilapidated grist and saw-mill that had been built in 1776—and a 30 by 40 feet barn, in which Rev. Aaron Hutchinson, father of the late chief judge Titus Hutchinson, gathered the first church in town. All that constitutes Elm street and its contiguous grounds and houselots, was an unbroken forest, and remained such for a little while after, when it was purchased by Mr. Marsh for £1000, and opened for improvement.

On going to Woodstock in 1789, and for a portion of that year, while he was building a dwelling-house for himself on the north side of Queeche River, near where he built his brick mansion in 1805, 1806, and 1807, he boarded at a farm-house about a mile out of the present limits of the village. He got to his office by a route of more than two miles—twice crossing the river—once by a ford way, and walking over a road with here and there a dwelling-house,

on lands that were in the beginnings of being converted into farms. In the early years of his professional life his place of worship was a log meeting-house on the summit of a hill, outside of the limits of the village, and some three-fourths of a mile from his dwelling-house. The Rev. Mr. Daman, an orthodox congregationalist, was the minister. At this period the principal part of the population of the town was in the southern and western sections — the village being in the north-eastern, and near the north line. Such, in brief, was the local habitation to which Mr. Marsh resorted as a young lawyer, with the fortunes of a life for himself, a youthful wife and prospective family depending on the man he was, and should prove himself to be.

By recurring to the dockets of the courts in Windsor county in 1790, it appears that the leading lawyers in the county were Stephen Jacob and Amasa Paine of Windsor, and Daniel Buck of Norwich. Several other established lawyers, some residing in, and some out of the county, were doing more or less of the business. On the old docket of the May term of the county court of that year, Mr. Marsh's name is entered in eighteen of one hundred and thirty-five cases. On the docket of new entries his name appears for the plaintiff in sixteen of the seventy-nine cases, and for the defendant in five cases. The names of Chipman, Bradley, and Tyler appear occasionally — being Nathaniel Chipman, Stephen R. Bradley, and Royal Tyler — all then prominent in the profession, and afterwards in official life. The county court was then composed of Gov. Joseph Marsh — father of Charles — Chief Judge, Elias Weld and Elijah Robinson,

Assistant Judges. The supreme court from October, 1789, to October, 1791, was composed of Nathaniel Chipman, Noah Smith, and Samuel Knight.

From such beginnings Mr. Marsh and the county seat grew apace. The establishment of the shire was matter of strong controversy between the interests that favored the older town of Windsor on the one hand, and Woodstock on the other. The act of 1786, designating Woodstock as the shire, did not quiet the matter, as is evinced by the subsequent legislation already referred to, continuing down to 1791. In the controversy that was on foot when Mr. Marsh located himself in Woodstock he at once vigorously enlisted. He told me that one object he had in making his home in Woodstock was to do what, and the utmost that he could to establish the county seat in that place, and to build up a village that would be eligible and pleasant to reside in as a home. Woodstock as the county seat, and as a village for residence and business, bears witness, in its history and character, to the success that attended the efforts in those respects, in which Mr. Marsh was recognized by all as the leading man.

The fact may not be without interest that the interposition of the Legislature was invoked to enable Mr. Marsh to get admitted to the Bar in Vermont. By an act of 1787 no person could be licensed by either the County or Supreme Court to practice law in this State, unless he had previously studied three years with a licensed attorney of the State, and on examination by the Court — a deduction of one year

being made in case the applicant had obtained the degree of Bachelor of Arts in some university or college. Various surmises were rife as to the motives of some leading lawyers in the State, who had prompted the enactment of that provision of the law. On graduating at Dartmouth College, in 1786, Mr. Marsh went at once to the celebrated law school of Tapping Reeve, in Litchfield, Connecticut. Excuse the interpolation of an incident. His outfit was an old mare, saddle, and bridle, with which to perform the journey, and three dollars in money, with which to pay the expenses, and they were adequate to both purposes. The extent of his wardrobe may be inferred from the fact that after arriving and taking up his quarters in a family for board, the woman of the house noticed that he constantly wore his surtout. On asking why he did not lay it off, she was frankly informed that it was the only coat he had. The old mare, saddle, and bridle, were turned to the account of paying expenses at the school.

After completing the prescribed course of study in that school, he was admitted to the Bar in the State of Connecticut. On returning home in the fall of 1788, he found that the law regulating the admission of attorneys, as it existed when he left home under the statute of 1779, had been changed by the act of 1787, and that he was thereby excluded from the Bar of Vermont until he should have studied two years more with some licensed attorney in this State. This becoming known to prominent men in Windsor and Orange counties, a vigorous memorial was preferred to the Legislature at the October session of 1788, whereupon

the following act was passed. Mr. Marsh was examined and admitted to the Bar soon after its passage.

"Passed Oct. 17th, 1788."—"An act to operate as a proviso to an act, entitled an act for the appointment and regulating attorneys and pleadings at the bar.

"*Whereas*, Charles Marsh, of Hartford, in the county of Windsor, and State of Vermont, after having acquired a public education with a view of becoming an attorney-at-law in this State, has been at expenses of a regular course of study of law in the State of Connecticut, and has there been admitted an attorney at the bar: And whereas, since the said Marsh commenced the study of law as aforesaid, an act has been passed prohibiting the admission of attorneys in the State, unless they shall have studied a certain time with a practicing attorney in this State:

"*Therefore*, It is hereby enacted by the General Assembly of the State of Vermont, that nothing in that clause of said act referred to in the preamble of this act, shall be construed to extend to said Marsh, but any of the Courts in the State are hereby impowered to admit and appoint him a regular attorney-at-law, agreeable to the known rules and customs of such Court, any thing in said act contained to the contrary notwithstanding."

Mr. Marsh graduated at the age of twenty-one years. He was admitted to the Bar in his twenty-fourth year, and settled in Woodstock as before stated.

I am able to allude to only two facts as indicating his character and standing as a student in college. In his college days the Valedictory Orator was chosen by the graduating class. Mr. Marsh and Asahel Huntington were the only candidates for the honor. Huntington was elected by the casting vote of Mr. Marsh.

The other fact is (and it was told me by Mr. Marsh himself) that he was deputed by the students of Dartmouth to obtain from Harvard College a charter for the New-Hamp-

shire Alpha of the Phi Beta Kappa Society in Dartmouth College. To do this he performed the journey from Hanover to Cambridge on horseback. That Alpha was organized in 1787, and he was one of the six, out of a class of twenty-five, that were elected members of the Society. Then, as now, the rule was that only one-third of any class should be eligible — that third to be selected with reference to rank and ability as scholars. Of him as a student in the law school, I know of no traditions. By his favor I am the fortunate owner of several volumes of manuscript exercises and notes written by himself, as part of the course of his instruction and training as a student of the law. They show that the law was taught as a systematized science, in its principles, technical rules, and practice, and that in the entire course, he was most faithful, laborious, and painstaking.

His rapid rise to a commanding position in the courts of the county, as well as his appointment (the first in the State) to the office of District Attorney, by President Washington — which office he held till Mr. Jefferson came into the Presidential chair — indicate very pointedly, that both as a student and a young practitioner, he assiduously prosecuted and successfully mastered the learning of the law.

At an unusually early period of his life as a lawyer, he came to take rank with the most eminent ability of the bar, and his services were sought in nearly all parts of the State in the most important litigation, both in the courts of the State and of the United States. As he was approaching the maturity of his manhood, he was recognized as *primus*

inter pares, and for many years the first rank was accorded to him by general consent.

He, however, was subjected to the common lot and fate of mere professional ability and rank in this country, and, to a large extent, in all countries, as shown and attained in the practice of the law. The lawyer's efforts are made in the service of his client, in private consultation, in secluded study and investigation, in elaborate and tedious preparation. His open displays are made in the unthronged forum of the court-room. Often his most masterly strokes of power and exhibitions of learning are only witnessed by an audience made up of the judges, the opposing counsel, sometimes the anxious parties, a few indifferent lawyers, and equally few less appreciative and more indifferent laymen. Sometimes, indeed, he has the good fortune of a larger audience, when some exciting cause of wider interest calls in the crowd to witness a jury trial. But even then the interest is confined to that audience. It dies with the occasion. The only record or memorial of the effort made, and the ability displayed, is the evanescent impression produced upon those who witnessed it; and that, beyond the time and the occasion, passes at most into a vague tradition that hardly survives to the next generation.

Having been the student, and for a year the partner of Mr. Marsh, and intimate in my association with him for the last ten years of his life, I had an interest to avail myself of opportunities for learning what I could of his professional career and character, — and what I could of the characterizing incidents and features of his efforts as a lawyer.

When I became his student, in August, 1839, he was passing through his seventy-fourth year. While I remained in his office he was engaged mainly in a few cases of importance in the Supreme Court and Court of Chancery.

He participated in a few jury trials, but did not take the burden and responsibility of putting in the evidence and making the leading argument. His last great argument to a jury was made for the plaintiff in June, 1839, when he was a month less than seventy-four years of age. It was in the famous slander suit of Skinner v. Grant — a Universalist against a Baptist clergyman. He encountered, as leading counsel for the defendant, Hon. Samuel S. Phelps, who had recently passed from the Bench of the Supreme Court to the Senate of the United States, and who was then in the primal maturity of his wonderful intellectual powers, and was the foremost man of his generation at the Bar of Vermont. The venerable barrister bore from the field the wreath of victory, while the younger combatant retired with honorable wounds, but aching from the blows he received in return for those he gave.

For the three years and more of my occupancy of the same office with him, Mr. Marsh was habitually at his office table in his armed rocking-chair soon after breakfast, and remained till the hour for dinner, and again soon after dinner, and remained till the hour for tea. When not occupied with some matter of business, he was reading the current public journals, or making interesting and instructive conversation on important subjects, and especially subjects appertaining to the law, remarking largely upon the

legislative and judicial history of the State, and interspersing graphic sketches of the marked men of the bar and bench, and illustrating by incident and anecdote. During that period, Judge Collamer was a member of the Supreme Court. His residence was near Mr. Marsh's office. When at home in vacation, it was his custom to frequent the office and discuss with Mr. Marsh the cases before the Court, and thus get the benefit of his suggestions and views upon important subjects of the law.

From all my sources of knowledge and judgment, I may confidently say that Mr. Marsh was endowed with the highest order and best quality of intellectual gifts, and that they were faithfully developed and cultivated by the studies and discipline of the best classical and professional schools of his day, and were further continuously developed and cultivated, sharpened, and refined, by the most studious, systematic, and vigorous pursuit of the law by him as a practitioner. For breadth and profoundness of comprehension, for keenness and subtilty of discrimination, for rapidity and justness of analysis, for clearness, strength, and force of logical argumentation, for effectiveness in advocacy, as well as for a thorough, appreciative, and practical familiarity with all the artificial technicalities of the law, he was long recognized by bench and bar as having no superior, and, for all those qualities in combination, as having no equal.

His lawyership was of a type and quality that are less prevalent in recent than in former times. It was the result of a profound study and mastery of the law, not only in its definitions, propositions, rules, and technicalities, but in its prin-

ciples, and reasons, and logic, — a study that not only stored the mind with knowledge, but trained it to the most patient application, to the largest and most facile comprehension, to astuteness in discrimination and distinction, to subtilty and point in reasoning, — a study where a knowledge of the law was necessary in order to enable one to get tolerably on in practice, — where *knowledge* and *mental effort* were not substituted by digests, and leading cases, and specific treatises, and reports whose name is legion, to which resort is had for some pat *dictum*, or some case in point. Then the library of most country practitioners contained no digest but Comyn's, few text-books but Coke on Littleton, Bacon's Abridgement, Hale's or Hawkins' Pleas of the Crown, and Blackstone's Commentaries; no books on Pleadings but some brief hand-book of practice, Lillies' Entries, and Saunders' Reports. A comparison of the Bar in past generations with it in the present suffices for commentary as to the practical result of the modes of achieving the old lawyership and the new, and indicates quite decisively which mode has produced the abler, larger, more reliable, more accomplished, and higher style of professional men.

In legal drafting and special pleadings he was a consummate master. I was told by the late Chief Judge Royce, who knew Mr. Marsh well in the zenith of his professional eminence, that not unfrequently the court would advise less skilled lawyers, whose cases had got swamped in the entanglements of inartificial pleading, to seek the aid of Mr. Marsh in extricating and putting them in technical form and on the proper footing, and that he never failed of doing it in

the best manner. For the characterizing qualities thus indicated, he attained and held his high position in the estimation of the profession and the courts. The more general appreciation of him, however, was due to his marked qualities as an advocate. In these modern days it can hardly be understood that the most effective advocate that the bar of the State has produced, (unless perhaps David Edmunds, in his brief and brilliant career, be excepted as his peer,) was hardly ever known to address a court or jury in a speech of an hour long. It can hardly be understood that he never undertook to play the orator, or to tickle untutored ears, or astonish rustic minds by the utterance of things beautiful and grand, with momentous emphasis, and thrilling modulations. His voice was small, almost feeble. The audience had to listen to understand what he was saying. He talked to the court and jury only, not heeding anybody outside. He talked quietly and without any considerable gesticulation. What there was of gesture was mainly by a significant and almost speaking use of the forefinger of his right hand. He addressed himself to courts and juries for the sole purpose of securing the verdict and judgment for his client. He mainly spoke to their understandings, reason, and judgment, with such adaptations to their emotional nature as would be likely to facilitate their arrival at the result he desired. The explanation of his short addresses is, that he selected as the subject of discussion only the points that would control in the decision to be made. The minor and less material points he never presented himself, nor replied to when presented by his adversary. He took his

stand upon the fewest points possible, and trusted the result to his success in maintaining them. He presented the case, thus eliminated of all its trashy margin of bewildering dubiosity to the easy comprehension of the tribunal, and urged his views with a force of logic and a plausibility of reason that, in great measure, excluded from the judging minds he was addressing the entertainment of any counter views of the case. Clear in his own views, he presented them so clearly and with such point, that other minds were clear in their apprehension of them; and what they so clearly saw and appreciated, they would be very likely to be satisfied with adopting and acting on, rather than on other views, more vague, less clear, less clearly apprehended, and of course less influential, and less reliable as the basis of a finding and decision of the matters in controversy. Judge Royce once told me of an instance quite in point, of which he was witness and participant. After the close of the last war with Great Britain, not a few of the leading business men of the State sought to improve their fortunes by illicit trade with Canada. The result was that, under Judge Hutchinson, as United States District Attorney, several of them were prosecuted at the same time. Each retained some leading member of the bar as his counsel for advice and defence. In this way most of the eminent lawyers of the State were thus employed, Judge Royce and Mr. Marsh being of the number. As the respective clients stood in the same peril, and upon the same grounds of law and evidence, they and their counsel put heads together and made common cause in the matter of defense. The cases were to be brought on for trial at a term of the United States Court

at Windsor. The accused with their counsel all appeared. It was understood that the District Attorney was to bring on a particular case for trial, as a test case. Thereupon counsel held a consultation to arrange the field management of the battle. Mr. Marsh was selected to make the argument for the defense. The trial proceeded. The evidence seemed to be ample for securing a conviction. The District Attorney opened the argument to the jury with exulting confidence. When he sat down, said Judge R., the jury seemed to have sealed their verdict; and when Mr. Marsh arose they seemed to say to him by their manner that they did not feel complimented by his undertaking to argue in defence. He said that himself and his associates were wondering what Mr. Marsh could say upon the evidence by way of argument against a conviction of the respondent. He, however, began, and had not proceeded long when one juryman and then another began to show attention, and the audience began to grow hushed. Soon the attention of the jury became absorbed and eager, as also did that of court and bar and audience. The jurymen leaned forward in their seats. Their eyes became kindled and strained, and their mouths ajar. He went through his speech and sat down. Judge Hutchinson arose to reply, but he had been completely unhorsed by the argument of Mr. Marsh. He was unable to collect and bring his ideas to bear. He made a few incoherent remarks and sat down — virtually abandoning his case as in a kind of despair. After a brief charge from the court, the jury retired; but they soon returned with a verdict of not guilty.

I venture to relate another instance, in which Mr. Marsh once said to me that his argument was the most satisfactory to himself of any he ever made. A Mrs. Lamphear and her son were jointly indicted for the murder of the son's wife. The belief was general that they were guilty of the act, and a large proportion of the community had foredoomed them to the gallows.

They were very poor, and very degraded and despicable; and this seemed to give point and conclusive force in the public mind to whatever might be construed into evidence of their guilt. They had in vain sought the aid of the lawyers in the county, who were accustomed to conduct trials in court. Such was Mr. Marsh's character and standing that they had not ventured to apply to him. He heard of their inability to procure the aid of counsel, and the reason intimated was the force of public sentiment against the accused. Thereupon he volunteered to defend them.

The day of trial came, and the court-house and the town were thronged by the multitudes, who were interested to aid by their presence in securing the conviction of those whose guilt was in their minds beyond a doubt. The trial was long and tedious, and through the whole the clamor for their condemnation was brought to bear to influence the result. The evidence was closed and the argument was made in behalf of the State. The Court took its recess for dinner. Mr. Marsh made his argument for the defence on the coming in of the Court in the afternoon. His first object was to counteract in the minds of the jury the outside pressure and influence of the strong prejudice and clamor against the respondents.

I have authentic knowledge of his opening sentences. Said he,

"Gentlemen of the Jury, I know that my clients are poor and mean, wicked and criminal, and that they ought to be hung. I have no manner of doubt that they have done enough a thousand times over richly to entitle them to the gallows. But, gentlemen, that is not the question.

"They stand charged before you with having done a specific act; and you sit there under the oath of God to say from the evidence given you in court, whether you find beyond a reasonable doubt that they have done that specific act; and if you, in passing upon that question, permit any consideration aside from the evidence given you in court to influence you in the slightest degree in the verdict you shall render, you will as richly deserve the state prison as they deserve the gallows."

This pretty distinctly presented to the minds of the Jury their position and their duty. How different in its effect from what would have been any deprecation of the prevalent clamor, or attempted apology or extenuation for the despicable character of his clients. After that opening, he proceeded to argue the case upon the evidence, as bearing upon the real matter in issue under the indictment. The accused were acquitted; and it was afterwards universally conceded that the acquittal was right.

Excuse me for relating another instance.

In the latter days of Judge Collamer's practice, before going upon the Bench in 1833, and when he had succeeded to the leadership, from which Mr. Marsh was receding as old age was supervening upon his great powers, he was employed to take the burden of defending a person indicted for a grave offence. Mr. Marsh was called in as advisory counsel. It was a case of great importance and interest.

Mr. Marsh, however, was not expected, nor was he expecting, to take part in the argument. Nevertheless, after the evidence was closed, Judge Collamer requested him to make some remarks by way of opening the defence to the jury. He consented to do so, and proceeded with one of his brief and characteristic arguments. I was told of the scene by a very intelligent and appreciative witness of it. As Mr. Marsh was proceeding, Judge Collamer sat looking intently and unconsciously into Mr. Marsh's face — his own becoming pale and eager. The crowded audience were hushed, every one inclining forward as if almost drawn from his seat by the intensity of his interest and emotion — some sobbing, and all in tears. At the close, Judge Collamer arose, and said to the jury that he had expected to address them in behalf of his client, but after the argument that had just been made, he could not pardon himself if he should imperil his client's cause by attempting to add anything by way of argument in his defence, and then resumed his seat.

Let these instances suffice for specific illustration; but pardon another reference to Judge Royce.

In a protracted conversation, with which he favored me a few years ago, he dwelt particularly upon Mr. Marsh's professional qualities and character, and illustrated them by relating many incidents that had fallen within his own personal observation. He said that, for resources and adroitness in conducting the trial of a cause, he surpassed any lawyer he ever knew, — that he had seen instances in which, as the trial was proceeding, the current seemed to be irresistible against him, and his defeat was seeming certain,

when, all at once, as if by some magical sleight, the current would be reversed, and bear him to a successful result. And he said, in summing up, that what was very rare and remarkable, Mr. Marsh equally excelled in every department of the law; and, taken for all in all, as a practitioner of the law, he was the ablest man he had ever known, either in the State or out of it.

Those who knew Judge Royce — how judicious and *judicial* he was in all his views and opinions, how discriminating and how just, and at the same time how free from enthusiasm in his favorable judgments of men, will regard his judgment concerning Mr. Marsh as entitled to confidence and respect.

I turn now to say something of Mr. Marsh in his personal, as distinguished from his professional character. Possessing such strength, and scope, and brilliancy of mind as are indicated by his great professional ability and success, he was not merely a lawyer. Though not distinguished for his attainments in science or refinement in literary culture, he was largely conversant with all subjects that would grace the high-bred lawyer and citizen, who felt an impelling interest, and took an active part in everything that affected the nation, the state, the church, and society. His cast and habits of mind led him in the direction of political, ethical and theological readings rather than of the classic prose and poetry of his mother tongue. In the departments first named he was eminently versed. Few men stood more intelligently upon clear and well defined principles, or could maintain themselves with larger resources of fact and force

of argument. He was hardly less a theologian than a lawyer. In politics he was a Federalist of the school of Washington, and thus he lived and died, without "shadow of turning." He was a valiant champion of the elder Adams till he made terms and entered into social fellowship with his arch enemy and unscrupulous maligner, Thomas Jefferson. Thenceforward he held him in unspeakable contempt. He profoundly despised John Quincy Adams after his early treason to his father by joining hands with Mr. Jefferson in politics.

In theology he was a Calvinist of the Edwards school, and was earnest for that faith as embodied and represented in the orthodox congregational creeds. From his middle life to his death he was a professing, earnest, and sincere Christian — contributing largely of his means and his personal efforts to all enterprises judiciously adapted to the spread and prevalence of the religion of the Bible. He gave to his parish the site for the meeting-house and the parsonage. He was a strong pillar and a faithful worker in the Church of which he was a member, and very efficient in staying up the hands of the ministry. He participated freely in the conference and prayer-meetings.

He was a corporate member of the American Board for Foreign Missions from the year 1818. He was one of the founders, and for many years, was President of the Vermont Bible Society. He was also Vice President of the American Bible Society, and of the American Education Society. He was also one of the early members, and most interested patrons of the American Colonization Society.

Mr. Marsh was an intelligent and faithful patron of sound learning, and was recognized as such at an early period of his life. In 1809 he became a member of the Board of Trustees of Dartmouth College, and held the place for forty years, and till he was removed by death. He came into the Board at an important epoch in the history of that institution. The administration of the President, John Wheelock, who had then held the office for thirty years, was causing great concern to some of the Trustees. Yet the majority was, as their predecessors had been, subservient to the views and wishes of the President — giving a formal and unquestioning assent and ratification to all his policy and practical measures. As the son, heir, and successor of Dr. Eleazer Wheelock, the founder and first President of the College, he conceived, and was apparently acting upon the idea, that although, under the charter, the College was a public eleemosynary corporation, yet it was in reality a corporation sole, and he was the sole corporator. His course of administration in reference to all its interests seemed to indicate that he regarded it as really a private foundation, in the benefits of which the public might share under such a practical governance as to him should seem meet, and that it was his right to subordinate the public interests to his own personal views and purposes. Judge Elijah Paine, of this State, had become a Trustee in 1806. He and some other of the Trustees were disposed to change that course and tendency of the Presidential administration. Mr. Marsh added to their number, and gave the preponderance against the policy and course of the President. Measures were

adopted and events were in train that, by gradual progression, culminated in 1815 in the dismissal of the President from his office. In the meantime, and following thereupon, through the instrumentality of the President, aided by his partisan friends, the interposition of the Legislature was secured, and the College, under the charter, was supplanted by a University under a legislative act of incorporation. Thereupon ensued scenes of controversy, attended with more or less of warlike demonstrations and violence, which gave occasion for, and resulted in, the famous "Dartmouth College Case."

At an early day, and from time to time, this State had been a larger pecuniary benefactor to the College than even the State of New Hampshire. The town of Wheelock, in 1785, was donated to the College by act of our State Legislature; and there were several other smaller grants of land. This State then, as it ever since has, furnished a considerable proportion of the students to the College,—now indeed furnishing about one-fourth of the entire number in the College proper. In those days, Vermont was deemed to be worthy and entitled to have an influential and efficient representation in the Board of Trustees. Such men as Nathaniel Niles, Stephen Jacob, Elijah Paine, Charles Marsh, and Samuel Prentiss were her representatives. The first four were for many years members at the same time. Judge Paine, Mr. Marsh, and Judge Prentiss were members together for some years. The quota of Vermont is now reduced to one. The first four were members during all the period of the origin, progress, and culmination of the great controversy; and they

were of the most active and most effective in carrying it through to a successful triumph for the College, as against the removed President and the University.

I had hoped to be able on this occasion to develope with considerable particularity and fulness the position and part that Mr. Marsh maintained in that matter. But I must content myself with saying, in brief, that he was the leading brain and pen of that Board in the conduct of the warfare in behalf of the College. In professional learning and ability he was eminently superior to any other member of the Board during that period. His pen for attack and defence was the most pointed and powerful. His fearless and uncompromising firmness, and his vigor of action in behalf of what he deemed the right, when great principles of law and morals, and great public and personal interests were involved, distinguishingly fitted and designated him as a foremost man in such a conjuncture in the affairs of the College. I have in my possession the printed "*Vindication* of the Trustees" in answer to the "Sketches" and the "Review" of the sketches, covering eighty-two pages of large octavo, with an appendix of twenty-two pages more, which evinces the point and power of Mr. Marsh's pen.

I have also in my possession copies of letters to Mr. Marsh from the eminent counsel, by whom the cause of the College was argued before the Superior Court of New Hampshire and the Supreme Court of the United States — Jeremiah Mason, Jeremiah Smith, Daniel Webster, and Tho. Hopkinson of Philadelphia, while the litigation was

in the process of being put on foot in proper form, and while it was pending for final argument. These letters show that Mr. Marsh held equal rank with them in weight of opinion in council, and was relied upon by them in devising and carrying forward the measures that would bring the subject matter of the controversy to a material and decisive issue for the judgment of the law thereupon. As he did not participate in the final arguments in either of the courts, of course his name was not heralded by the published reports of "The Dartmouth College Case"; — a noticeable instance, showing how the most momentous and successful exertions of eminent professional learning and ability may have no public audience, and no "trumpet that sings of fame."

As before remarked, Mr. Marsh continued to hold his place as Trustee till removed by death in 1849. To the last years of his life he was active, and exercised a controlling influence in the discharge of the duties of his office. I have authentic assurance that, in all matters within the province of action by the Trustees, he was individually the most pronounced and effective member of the Board. I know some instances in the latter years of his office in which both President and Professors had, for some imputed delinquency, a moving experience of his personal interposition. I dismiss this topic with saying that, next to his family, the College was cherished by him as an object of affectionate interest to the close of his life.

As a man in his individual personality — as a *man*, indipendently of, and characterizing him in, his conventional position and relations — domestic, social, professional and official — he was marked and noteworthy.

He was tall, more than six feet, of a well proportioned frame, spare of flesh, but not cadaverous — of a fine and sensitive nervous and muscular organization — of great equipoise and self-control over a temper that was both susceptible and strong. He was remarkably neat in his person and his dress. He always wore a suit of black. His coat retained the cut of earlier days and did not vary with the changing fashions. He wore a broad, white neckerchief, with his shirt collar folded down over it, and he adhered to the ruffled bosom to the last of his life.

His mind was of the first order in quality and strength — quick, active, vigorous, and earnest — and was trained by study and use to the most facile action and effort.

In his moral composition he was equally marked. His apprehension of right and wrong had no nimbus of dubiosity. The distinction between them in his mind was as by a line of fire issuing from an impassable gulf. What was settled in his mind as right, was right and nothing else. Though he was rapid in his mental and moral processes, he was rigorously cautious as to the correctness of his results. He endeavored by all his means to be sure that he stood on solid premises. He was careful that his reasonings should lack no element or feature of sound and legitimate logic, nor be turned awry by impertinent influences. Upon his conclusions he stood immovably, fearlessly, and maintained himself with giant strength against all odds in controversy. He enjoyed some advantages in this respect, for he was so constituted, tempered and trained, that, provided he secured his own self-respect, he made no question with himself

how others might regard what he thought, or said, or did. Though he was not indifferent to the approbation and good opinion of others, he would only secure it as it might be obtained by his acting up to his own moral convictions. Hence he was plain and outspoken on all subjects of interest — public, social, and personal; and though he was not forward or intrusive — though his ordinary bearing in his intercourse with those around him was marked by a gentle modesty and a quiet gracefulness — still, he never compromised his opinions, or modified his expression of them, when he had occasion to make them known, from any considerations of social complaisance or of personal delicacy.

With such clearness and strength of comprehension and conviction, it was natural, as was the fact, that he should have a kind of imperiousness and impatience of manner which would be manifested as occasion should prompt; and often it bore discomfortingly upon those who became the objects of it. Still, he was of delicate sensibilities, of a placable spirit, and a large, kind, and generous heart.

Though his manner was controlled and free from boisterousness when he was under the strongest excitement, still there was a power in it that told with strange effect. In the prosecution of his moral convictions by word and act, the emotion of fear as to consequences never seemed to have been consciously felt by him.

There was a period when it was pretty extensively thought that the judges of the supreme court were accustomed in their official administration to show favor to the parties and counsel who were of their own political faith,

and disfavor to those of a different cast. Those judges were of a party to which Mr. Marsh did not belong. After some supposed experience in this respect, as Mr. Marsh was addressing the jury in behalf of a client whose politics were obnoxious to the court, he admonished the jury that the presiding judge would be likely in his charge to do what he could to secure a verdict against his client, — but that they were sworn to find the facts from the evidence, and it was no part of the judge's province to meddle with that matter in his charge, — and in that respect it was their duty to disregard what the judge might say. The judge interrupted him, calling him to account, and intimated that he would commit him for contempt. Mr. Marsh quietly turned towards him, and extending his forefinger somewhat in the direction of the judge's nose, said in a suppressed tone — "I defy you to do it. Your honor dare not do it." The judge quailed, and the argument proceeded.

There was another instance, when Judge Skinner — one of the most upright and able of our judges, — was presiding in the trial of a cause by jury, in which Mr. Marsh regarded it of great importance to make a searching cross-examination of an adversary witness.

As he was proceeding, the judge somewhat impatiently interposed, indicating by his manner that he thought Mr. Marsh was going beyond the limits of propriety. He explained to the court the propriety of what he was doing, and proceeded with his cross-examination. Soon the judge interrupted him again, and again Mr. Marsh explained, and was proceeding as before. Again the judge interposed still

more pointedly, and with somewhat of menace in his manner. Mr. Marsh thereupon arose, and, with his arms folded across his breast, addressed himself to the judge in a manner of cool and overmastering fearlessness, amounting almost to defiant boldness, in the assertion of what he deemed his right, and said, "I have made known to the court the reason of the course I am pursuing. I regard it important to the rights and interests of my client that I should be permitted to proceed. In my long experience in the courts, I think I have learned what are my rights, as well as what are my duties both towards my client and the court, and I have self-respect enough to insist upon the one and perform the other, and I am in no need of being instructed by the court as to either. I will thank your honor not to interrupt me again while I am undertaking to cross-examine this witness." The cross-examination proceeded, and the judge did not interrupt him again. The result was that the witness was shown from his own mouth to have been false and lying in the testimony he had given.

For one so highly endowed with powers that would have enabled him to shine in the high offices of the State and Nation, and with full consciousness of those powers, he was most remarkably free from that cast of ambition which almost uniformly inspires such men with a desire for such offices. He never held but two offices depending on the popular vote. He was member of the 14th Congress (1815–1817). He was nominated against his will and protest, and after he had left Montpelier, where had assembled several self-commissioned leading politicians to designate a candidate. He

did not heed instructions in his official action, but voted according to the dictates of his own judgment in the discharge of his sworn public duty. Among other things that were not savory to his constituents, he voted in favor of compensating the members of Congress by an annual salary of $1500. He was not again elected. He would have been likely to make a still poorer show in securing popular favor in these later times, when the crowning merit of a public representative is deemed to be, that he is but the echo of the voice of his constituents. The other office was that of member of the Council of Censors in 1813.

Although conscious of his powers and ability, he was not self-seeking. He exercised, as it were, a judicial judgment upon the comparative merits of others and himself, and accorded to others the full measure of their dues. In this, too, he was controlled by his delicate and uncompromising sense of right and propriety in all matters touching public and personal interests, as involved in, and affected by the holding and administration of public office. While his father was chief judge of the county court, it was the province of that court to appoint the state's attorney. That office, upon the solicitation of the bar, was tendered to him. He declined to accept it, for the reason that he deemed it improper for him to hold it while his father was presiding judge of the court from which he would have received the appointment, and in which he would have to act in performing his official duties.

The office of chief judge of the supreme court was tendered to him at the time Nathaniel Chipman, in 1813, was

restored to that position. I once asked Mr. Marsh why he did not take it. He said that, while such a man as Nathaniel Chipman was available for the place, he should have been so ashamed of himself if he had consented to take it, that he should not have been able to hold up his head in the face of the public. That was a weakness not very prevalent at any period. I think cases of it have not been recently known.

I may here with propriety remark that there existed between Mr. Marsh and Chief Judge Chipman a very cordial and intimate friendship. I know of no man for whom Mr. Marsh felt a more profound reverence and esteem.

What has thus been shown of Mr. Marsh illustrates what was true in fact, that he was very little affected in his judgment and action by considerations of personal favor to himself, to be secured by catering to popular sentiment, or cultivating popular eclat. Though he had great respect for the intelligent and considerate judgment of others, he had none for the spasmodic and zealous demonstrations of partisan popular sentiment. He regarded the vote of majorities as a very uncertain and unstable test or evidence either of the right or the expedient in religion, or in morals, or in politics. And the eclat achieved by securing the shout and song of mere popular applause he regarded with supreme contempt. No considerations in that respect were ever supposed to have affected his own views, expressions, or actions upon any subject in any relations of life.

His entire, uncalculating, unselfish and fearless independence gave him great weight of influence in all matters in

which the action of others was to be based upon, and controlled by, an intelligent judgment, led to a result by the legitimate and substantial reasons of the thing.

While Mr. Marsh was neither waggish nor droll, he nevertheless had a keen and ready wit, which laughed in genial humor, or wounded with a purposed stroke, as occasion might call it into exercise. His faculty of drawing the ludicrously grotesque as well as of limning the repulsive and detestable in conduct and character, has probably not been equalled in the State.

His pupil and partner, and life-long neighbor and friend, the late Honorable Norman Williams, was accustomed to recount instances in illustration in both directions. But time forbids that I should recite them.

I beg pardon for obtruding one that fell under my own observation. An important cause in chancery came on for argument at a term of the Supreme Court in 1841. The court was composed of Williams, Chief Judge, Royce, Redfield, and Bennett. Mr. Marsh was counsel for the defendant. He had seated himself at the table, folded his paper, and selected his pen for the purpose of taking notes of the argument to which he expected to reply. As the orator's counsel commenced, Mr. Marsh, with pen in hand, was ready to make his notes. After maintaining his position for awhile, and finding no occasion to use his pen, he laid it down, and settling back in his chair, with his head dropped upon his right shoulder, he was quietly enjoying his pinch of snuff. At the end of about thirty minutes, the advocate made a brief pause. On starting anew, in a

tone and emphasis peculiar to himself, he said, — "And now, your honors, I am going to suggest one idea." "Are you?" interjected Mr. Marsh. "Stop, let me take it down," in the most quizzical tone of mock sincerity, at the same time, with a nervous motion, catching up his pen and putting himself in position, he sat intent to catch the forthcoming "*one* idea." The scene was so comical in the manner in which Mr. Marsh interloped upon the unwary advocate — his voice and motions, and the expression of his face, that all the judges and all the lawyers — the advocate excepted — incontinently burst into a spontaneous and hearty laugh. The laughter subsiding, the advocate went on, — Mr. Marsh for awhile retaining his position, ready for the promised idea. After continuing thus for some minutes, he dropped his pen, and settled back with a kind of sigh of disappointment, saying in a most deprecatory tone, "Ah, a false alarm after all"; again provoking a merry laugh. He found no further use for his pen during the residue of the argument.

Chief Justice Williams once said to me that Mr. Marsh wielded the most powerful weapon of severity of any man he ever knew. I have heard others, who knew him well, make substantially the same remark. And what was quite peculiar, his most agonizing strokes were administered with entire quietness of manner, with suppressed voice, and in language of rigorous chasteness. He scarified, and flayed, and slaughtered with a polished weapon. But woe to the person on whom it fell.

Judge Hutchinson, in speaking to me of Mr. Marsh, said that he had the most wonderful faculty of making any body appear contemptible, of any person he ever knew. Said the Judge, —

"Once when I was State's Attorney a man was indicted for stealing hay out of his neighbor's barn. The case came on for trial, and Mr. Marsh defended the accused. I introduced as a witness an entirely credible man, who testified fully all about it, — that he saw the respondent go into the barn, and then he looked through a crack between the boards and saw him pitch down the hay and bundle it up and carry it out of the barn, and then saw him go off with it ; and there was no sort of doubt about the theft having been committed just as the witness testified. But when Mr. Marsh came to argue the case, he made that witness appear so mean and contemptible — peeping through a crack to see his neighbor steal hay — that the jury didn't pay the slightest attention to any thing he had testified, and they brought in a verdict of not guilty."

Mr. Marsh had been sued by a lawyer of Rutland, who was more favorably regarded for his ability than his uprightness, on some alleged personal claim. The suit was unfounded and vexatious. He went to Rutland at the proper time for the purpose of attending the trial. Instead of proceeding to trial, the plaintiff applied for a continuance, making a verbal statement of his reasons, and offered to put the statement in writing and verify it by his oath. Mr. Marsh objected, and stated the grounds of his objection, and closed his remarks by saying : — " I beseech your honors to forefend that man from the crime of perjury, by not affording to him either the temptation or the opportunity to commit it, as he certainly would do, if he should make oath to the statement he has made to the court." The

court declined to receive his affidavit, and the cause was ended by a judgment for the defendant.

I should not be justified in citing further illustrations.

I quote a paragraph from a memorial sketch, written soon after Mr. Marsh's death, by the late President Lord, — one of the keenest and most appreciative discerners of the quality and character of others that I have ever known. His ideas of Mr. Marsh were formed from an intimate personal acquaintance of thirty years.

"His manner was simple and quiet. Except that his eye was ever penetrating and searching, he seemed ordinarily in repose. But his temperament was highly nervous and excitable. Under a strong impulse he was impetuous and severe. He could then deal in sarcasm and invective; and on such occasions one would not choose to be the subject of his criticism or the victim of his indignation. However, it was not in matters personal to himself that he was apt to become excited; but when his cause, his trust, his country, or his faith seemed to be in danger. It was his keen discernment of truth, his sense of right, his regard for fitness, his jealousy for important interests, that made him ready to take alarm, and roused his lion spirit. For that reason those who knew him took it not unkindly though he sometimes exceeded the limits of conventional complaisance, and bore more heavily upon an adversary than they would have dared or chosen. They would as soon complain of electricity because the lightning sometimes strikes. If he took stronger views of the subject that excited him than most men, it was because he had a stronger mind, more comprehensive of principles and relations, and more prophetic of results. If he was sometimes more confident and uncompromising, yet who is not when he knows himself is right, and the world is wrong. If he stood by his own judgments against the suggestions of expediency and policy, yet, if there were no such men, then wisdom and virtue would be mere abstractions, of no practical account or value in a world that could not otherwise be saved."

Mr. Marsh was not a politician; yet he felt a constant and absorbing interest in public affairs as affected by na-

tional and state legislation, and by the executive administration of both governments. He was in correspondence with leading men at Washington upon subjects of congressional and executive action, and was full and frank in suggestion, criticism, approval, and condemnation. I knew of his writing several letters, not only to the delegates from Vermont, but to Mr. Webster and Mr. Choate. He was regarded by them, and by many of the eminent men of the country in all stations of political and judicial office, as their peer, and he commanded their profound regard and respect. He was at times in correspondence with Chancellor Kent.

Mr. Marsh was a model gentleman of the old school, and of the highest social breeding. With great simplicity of manner, he bore himself with a courtly and attractive grace. He was familiar with the best forms of society, both in city and country, and his baronial family home was the free resort of leading families of New England and New York, as well as of the poor and the lowly of his own neighborhood. Though riches, for the sake of being rich, were no object of his ambition or effort, and though he gave no thought to the accumulation of property as an independent and ultimate purpose, his very large and lucrative practice brought a large current income, a portion of which was expended in the purchase of an extensive real estate constituting his farm and homestead. He disposed of portions of that real estate from time time, till some four hundred acres were remaining, which, a few years before his death, he conveyed to his youngest son, — thereby relieving himself from the burden of its management, and making provision for the proper sup-

port of himself and his wife, in the accustomed family arrangement, during the residue of their lives. "Beautiful for situation" was the house in its grounds and its commanding outlook over the village, and through a wide sweep of delightful landscape. It has now become the residence of Mr. Frederick Billings, who has enlarged the mansion, and is extensively improving the surrounding grounds. All the residue of Mr. Marsh's income was currently expended in the support and education of his family, in maintaining the large and generous hospitalities of his home, in dispensing aid and comfort to needy neighbors and dependents, and in free contributions to worthy enterprises of religious, philanthropic, and social interest. Aside from his real estate he had no self-accumulating moneyed investments.

Mr. Marsh was twice married: — first, in 1789, to Miss Nancy Collins of Litchfield, Connecticut, by whom he had a son and a daughter. That son bore his father's name, and was in all his qualities a worthy son of such a sire. He was educated at the same college and the same law school as his father, and gave sure signs of great eminence if his life had been spared; but he died of consumption in 1817, at the age of twenty-seven years. He had settled as a lawyer, and had married, in Lansingburg, New York. The daughter died some fifteen years ago, the widow of Dr. Burnell, of Woodstock. Mr. Marsh's first wife died in 1793. His second wife was the widow of Josias Lyndon Arnold, who was a large proprietor of lands in St. Johnsbury and vicinity, and a part of whose name was given to the town of Lyndon. He settled in St. Johnsbury as a lawyer, and

there died in 1796, aged twenty-eight years. Mrs. Marsh was the daughter of Dr. Elisha Perkins, of Plainfield, Connecticut. The family was, and has continued to be, one of the foremost in social position, and most favorably known in Connecticut and wherever its descendants have been dispersed and settled. As the wife of Mr. Arnold, she made her wedding tour from her home in her father's household to her new home in Vermont on horseback, and for a considerable distance before reaching St. Johnsbury on a mere bridle road cut through otherwise unbroken forests. As the wife of Mr. Marsh she was the mother of four sons—Lyndon A., George P., Joseph, and Charles, and one daughter, Sarah B., who became the wife of the Hon. Wyllys Lyman, late of Burlington, and by him she was the mother of a son, who is now holding a commission in the United States Army, and of a daughter who is the wife of our present distinguished Senator Edmunds. They are the only surviving grandchildren of Mr. Marsh. The son, Joseph, and the daughter Mrs. Lyman, died nearly thirty years ago. The other sons survive. The second wife died in 1853.

It seems proper to say, that with a wife who was meet for him, and was his peer, the family of Mr. Marsh was of controlling influence in giving form and character to the social organization and development of the growing village and town. Both of them gave the best of their energies and efforts, and contributed most liberally of their means, in devising and carrying forward all plans of policy and action that would tend to the upbuilding of a social order that

should answer to their desires in respect to the place of their family home for all the fortunes and experiences of a life for themselves and their children. Woodstock in its social history is the memorial and witness of the quality and manner of their work. The better forms of social life throughout the county and the State are not without significance to the same effect.

Mr. Marsh died at his residence, of an acute inflammation of the lungs, after a short but painful illness, on the 11th day of January, 1849. His faculties of body and mind had not suffered the decay so common to old age. Except that their natural force was somewhat abated, they remained unimpaired to his last sickness, and in that his mind was clear, strong, and active to his last moments.

Upon his death, obituary notices of various length and fulness were extensively published in the journals of the time. I have alluded to one, very full, discriminating and just, by President Lord. I have the copy of another, printed in the *National Intelligencer*, at Washington, and supposed to be from the pen of Judge Phelps, who was then Senator in Congress.

But I must close this long and inadequate paper; and I do so by repeating in substance what I penned many years ago on the same subject.

To apprehend and appreciate the true measure and worth of the man, it is essential to hold in mind the character and condition of the field in which he began and prosecuted the work of his life of manhood. In his beginnings Vermont was known by a bad, rather than a good, name — rather as

the asylum of rogues and refugees from justice, than, as now, as the model and proverb of virtue, intelligence, prosperity, and happiness. The territory was wild and rugged. Only the germinal elements of society existed. Government was in embryo. Judicature and jurisprudence were crude, fragmentary, and inadequate. Education in literature, science and art, had no footing in the State. The maturing of a complete form of constitutional government — of an ample and well adjusted system of statutory and judicial law — of an orderly and upright administration of justice; the devising and sustaining and rendering effectual of the early measures that have resulted in our established and controlling religion, in the general intelligence and higher education of the people, and in the good order and refinement of society, are of the work and fruits of the life, efforts, and influence of Mr. Marsh and his associates of kindred spirit, ability, and worth. If he had chosen his field of action in some of the important towns in the older States of New England, he would have been known as Parsons, Gore, Story, Mason, and Smith have been, and still are known. His fame would have been more on the tongues of men, in the public journals, and the printed books. Under the fortunes and lot of his life, Vermont, in the best features of her history, in character and position, is an eloquent and enduring memorial of his life, and services, and worth.

APPENDIX.

STEUBENVILLE. September 26, 1870.

Dear Sir :—I have just received a letter from my cousin, Charles Marsh, of Woodstock, asking for you some information as to my grandfather, Joseph Marsh, of Hartford, Vermont. I wrote to him on the 23d of September, 1869, giving him such information as I had from conversations in the family respecting my grandfather until his death in February, 1811. (That letter has been mislaid.) I was eighteen years and sixteen days old when he died, and had lived in the same family with him—being the oldest son of Daniel Marsh, who was the second son of Joseph. My grandfather was what is called a reticent man. He spoke only incidentally of the events of his life. What I learned of his participation in public affairs was mostly from conversations between him and old men of his own age who visited him, and with whom he talked familiarly of the events in which they had participated. He was colonel of a regiment of militia of the New Hampshire Grants. The sudden movements at Hubbardton prevented his being there. I am certain from hearing him, Judge Paine of Williamstown, Major Bailey of Weathersfield, I think, also, his brothers, Abel and Elisha Marsh, and his oldest son Joseph, all speak of the battle of Bennington as an event in which they had a share—that they were there. I have also heard them and my father, who was a younger man, often speak of camp life whilst the regiment guarded the river to prevent Burgoyne's retreat and cut off supplies from reaching him. The Rev. Lyman Potter, of Norwich, was chaplain of the regiment. He removed West about 1801 or 1802, and settled three miles from here, on the former residence of Logan, the Mingo Chief. We became intimate after 1820, and he often spoke of my grandfather, of whom he was an admirer, and of early events, and of the war. He was at Bennington, and in the camps at Whitehall, Fort Ann, Fort Edward, and Sandy Hill. After

Mr. Potter's death, my grandfather's papers came into my hands, and amongst them I found Mr. Potter's receipt to my grandfather as colonel for his pay as chaplain of the regiment, upon which, and some evidence obtained at Norwich, his widow obtained a pension.

My grandfather's book-learning was very limited, but he was by no means ignorant. I have often heard him say that he never went to school but one month in his life, — but he always added, in speaking of it to his family, that there were other ways of acquiring knowledge. He was not an indiscriminate reader, and in his latter years he read but little. He had a tenacious memory, and what he read he made his own. He had a close logical mind, and he excelled in acquiring knowledge from conversation as well as in imparting it. His conversation was the most interesting I ever listened to. It was never trifling. His temper was equable. He was kind, never irritable, and all children loved him. His politics were of the pure Washingtonian school, in which he trained all his family.

If his charity ever fell short, it was towards a man who spoke disrespectfully of Washington. He was a sincere, earnest Christian, but was free from bigotry. When I was fifteen years old, he used his influence successfully to have his grandchildren — about twenty around him — attend a dancing-school. I remember how he reproved his brother deacon, Clark — who was a very bigoted man. Whilst they were earnestly debating the matter, deacon Clark, being fond of music, beat time with his foot to a fiddle that old Peter, a black man, was playing in the kitchen. He silenced the deacon by boldly charging him with dancing.

In person, my grandfather was of large stature and of good proportion. As tall at least as Lyndon, he was broad-shouldered, large boned, lean, of great muscular power. His weight was over two hundred pounds. I have seen him do things at eighty years old that none of his descendants could do. He wore small clothes and the triangular hat. He was a bold and graceful horseman. He kept a chaise, but he never used it when he rode alone.

Much of the original surveys of Hartford, Pomfret, Woodstock, and Barnard, were made by him.

As I have thus described him, he rests in my remembrance. It would be strange if I were not partial to his memory.

Truly, ROSWELL MARSH.

Hon. James Barrett.

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